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In the Supreme Court of the United States

OCTOBER TERM 1940.

THE CHASE NATIONAL BANK OF THE
CITY OF NEW YORK, Trustee, etc.,

Petitioner,

vs.

CITIZENS GAS COMPANY OF INDIAN-
APOLIS, *et al.*,

Respondents.

No. 423 12

THE CHASE NATIONAL BANK OF THE
CITY OF NEW YORK, Trustee, etc.,

Petitioner,

vs.

THE INDIANAPOLIS GAS COMPANY, *et al.*,

Respondents.

No. 424 13

**CROSS-PETITION FOR WRITS OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.**

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*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

This cross-petition of The Chase National Bank of the
City of New York, Trustee, respectfully shows to this
Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTERS INVOLVED.

The petitioner contends that there is no occasion for
granting a writ of certiorari in these causes and presents
its cross-petition for the sole purpose of obtaining a review
of the rulings of the Circuit Court of Appeals adverse to it,
in the event this Court grants the petitions for certiorari

filed by the City of Indianapolis, *et al.*, so that in such event all questions presented to the lower Court will be before this Court.

In 1902 defendant, The Indianapolis Gas Company, gave an open mortgage upon its plant and property to one of the plaintiff's corporate predecessors to secure an authorized bond issue of \$7,500,000. (Bill, Exhibit A, I R. 23; Offered, II R. 327.) In 1913 The Indianapolis Gas Company leased its property to defendant, the Citizens Gas Company, as lessee, for 99 years, the lessee agreeing as part of the rental to be paid by it to pay the interest on the outstanding mortgage Bonds of The Indianapolis Gas Company and on any additional Bonds which might subsequently be issued. (Bill, Exhibit B, I R. 51; Offered, II R. 327.) Citizens Gas Company paid the interest on the mortgage Bonds from 1913 to 1935 (II R. 627, Stip.* par. 11(a)), and sold about \$2,000,000 of the Bonds to the public on representations that it had a 99 year lease on the property and had agreed to pay the interest on the Bonds as part of the rental. (II R. 627, Stip. par. 10(a); II R. 573, 592-605; III R. 899-922.) On September 9, 1935 it conveyed all of its property, including the Lease in question, to the City of Indianapolis, the entire consideration being paid to the bondholders and stockholders of Citizens Gas Company, leaving it without assets. (II R. 634-5, Stip. pars. 16-17.)

The City accepted and recorded the various instruments of transfer, including an assignment of the Lease, went into possession of the Citizens Gas property, including the leased property, and has operated all of said property and received the revenues therefrom continuously since September 9, 1935. (II R. 330, 350, 467-8; II R. 622-3, Stip. par. 6(c).) The City claimed, however, that it had not

* The abbreviation "Stip." refers to a Stipulation of the parties introduced in evidence in the District Court as Plaintiffs' Exhibit 1. This Stipulation appears at II R. 616-639 and was introduced in evidence at II R. 326-7.

accepted a transfer of the leased property and that it was entitled to keep and operate the leased property without any liability under the provisions of the Lease which had been assigned to it. The City paid the Bond interest due on October 1, 1935 and on April 1, 1936, but no interest has been paid since April 1, 1936.

The petitioner, The Chase National Bank of the City of New York, Trustee, brought this action in the District Court of the United States for the Southern District of Indiana, suing as Trustee under the Indianapolis Gas mortgage and joining Indianapolis Gas, Citizens Gas, and the City as defendants. Plaintiff sought to recover judgment for the overdue interest on the Bonds, with interest on unpaid interest, against all the defendants and against the property once owned by Citizens Gas and transferred by it to the City of Indianapolis. Plaintiff also sought a declaratory judgment to establish that the Lease from Indianapolis Gas to Citizens Gas was and is binding on all the defendants and on the property transferred to the City by Citizens Gas. Federal jurisdiction was based on diversity of citizenship.

The District Court denied plaintiff any relief except a judgment against Indianapolis Gas alone in the amount of the unpaid coupons, but without interest on unpaid interest. The District Court held, however, that the judgment for overdue interest against The Indianapolis Gas Company bore interest at the rate of 6% per annum. (III R. 1193.)

Separate appeals were taken by plaintiff and Indianapolis Gas to the Circuit Court of Appeals for the Seventh Circuit. These two causes, Nos. 7143 and 7144, were heard together on the same record. The Circuit Court of Appeals reversed the judgment of the District Court and held that plaintiff was entitled to the relief prayed for, including interest on unpaid interest. The Court of Appeals held,

however, that the unpaid interest coupons bear interest at the rate of 5% from maturity to the date of judgment and that the judgment itself bears interest at the same rate (IV R. 1305-6), whereas plaintiff contends that the correct rate in each instance is 6%. The difference between the 5% and 6% rates up to October 1, 1940, amounts to something over \$30,000.

This cross-petition is filed to the end that all the questions presented to the lower Court may be before this Court in the event it grants the City's petitions for writs of certiorari. Petitioner believes that there are no questions involved in these cases warranting the granting of a writ, either at the request of the City or this cross-petitioner, but in the event certiorari is granted it wishes to have all the questions decided by the lower Court here for decision.

The District Court made findings of fact (III R. 1160) and conclusions of law (III R. 1190) and wrote an opinion. (III R. 1122.)

The opinion of the Circuit Court of Appeals (IV R. 1281-1306) is reported in *113 F. (2d) 217*.

B.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code (28 U. S. C. § 347(a)).

The judgments of the Circuit Court of Appeals for the Seventh Circuit were entered on June 6, 1940. (IV R. 1307-8.) The City's petition for a rehearing and its petition for a reargument were denied July 19, 1940. (IV R. 1336.) The City's second petition for a rehearing was denied August 15, 1940. (IV R. 1405.)

C.

THE QUESTIONS PRESENTED.

This cross-petition presents the following questions for determination, in the event that the City's petitions for certiorari are granted:

(1) Are the sums due on the unpaid coupons in these cases "money due on any instrument in writing," within the meaning of the Indiana statute (§ 19-2003, *Burns Indiana Statutes*)* which provides that the rate of interest on such money shall be 6%?

(2) Do the unpaid coupons contain any agreement as to the rate of interest *thereon* which precludes the collection of interest thereon after maturity at the legal rate of 6%, in accordance with the provisions of the aforesaid statute?

(3) Do the unpaid coupons contain any agreement as to the rate of interest thereon, so as to preclude the application of the Indiana statute (§ 19-2002, *Burns Indiana Statutes*)† which provides that the rate of interest on judgments shall be 6%, if the contract sued on contains no agreement as to the rate of interest on the contract itself?

* Section 19-2003, *Burns Indiana Statutes*, 1933, in so far as material, reads as follows:

"On money due on any instrument in writing. * * * interest shall be allowed at the rate of six dollars [\$6.00] a year on one hundred dollars [\$100.00]."

† Section 19-2002, *Burns Indiana Statutes*, 1933, reads as follows:

"Interest on judgments for money, whenever rendered, shall be from the date of the return of the verdict or finding of the court, until the same is satisfied, at the rate per cent agreed upon in the original contract sued upon, not exceeding eight [8] per cent where the obligor in such contract is a person other than a corporation; and if there be no contract by the parties, then at the rate of six [6] per cent per annum."

(4) Is there any warrant for reading into the coupons an implied agreement that the rate of interest *on the coupons* after their maturity shall be 5%, merely because the coupons themselves represent 5% interest *on the Bonds?*

D.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRITS.

Plaintiff contends that these cases present no grounds for the exercise of this Court's discretionary power to grant a writ of certiorari. This cross-petition is filed for the sole purpose of anticipating the situation which would be presented if this Court grants the City's petitions for certiorari and brings these cases to this Court for review, in which event plaintiff desires a review of the rulings by the Circuit Court of Appeals which are adverse to it.

If the City's petitions for certiorari are granted, plaintiff wishes to present for consideration certain errors by the Circuit Court of Appeals as follows:

(1) Its error in holding that the rate of interest on the unpaid coupons shall be 5%, whereas the Indiana statute (§ 19-2003, *Burns Indiana Statutes*) provides that the rate of interest on "money due on any instrument in writing" shall be 6%.

(2) Its error in holding that the coupons themselves specify the rate of interest to be paid on the coupons after their maturity, and thereby preclude the collection of interest thereon at the legal rate of 6%.

(3) Its error in holding that the rate of interest on the judgment itself shall be 5%, whereas the Indiana statute (§ 19-2002, *Burns Indiana Statutes*) provides that the rate of interest on a judgment shall be 6%, if the obligation sued on contains no agreement as to the rate of interest to be paid on the obligation itself.

(4) Its error in holding that the coupons themselves specify the rate to be paid on the coupons after their maturity, and thereby preclude the collection of interest on the judgment at the rate of 6% per annum, the rate provided by statute when the obligation sued on contains no provision as to the interest to be paid on the obligation itself.

(5) Its error in holding that the coupons contain an implied agreement that the rate of interest *on the coupons* after their maturity shall be 5%, merely because the coupons themselves represent 5% interest *on the Bonds*.

WHEREFORE, your petitioner respectfully prays, in the event the petitions for writs of certiorari filed by the City of Indianapolis, *et al.*, in this Court on the ^{12th} day of September, 1940, Nos. ~~421~~ and ~~422~~, October Term, 1940, or either of them, or any other petition for certiorari in either of these cases, is granted, and only in such event, that your petitioner may also be granted writs of certiorari to be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Seventh Circuit, requiring that Court to certify and send to this Court for its review and determination a full and complete transcript of the record and proceedings in the case numbered and entitled on its docket *The Chase National Bank of the City of New York, Trustee, Plaintiff-Appellant, v. Citizens Gas Company of Indianapolis, et al., Defendants-Appellees*, No. 7143, and in the case numbered and entitled on its docket *The Chase National Bank of the City of New York, Trustee, Plaintiff-Appellee, v. The Indianapolis Gas Company, Defendant-Appellant*, No. 7144; that this Court require the United States Circuit Court of Appeals for the Seventh Circuit to modify its opinion, decision, and order in said causes so as to provide for plaintiff's recovery of interest on the unpaid coupons from the dates of their respective maturities to the date of the judgment at the rate of 6% per an-

num. and interest on the judgment itself at the rate of 6% per annum until the judgment is satisfied; and that your petitioner be granted such other and further relief in these premises as to this Honorable Court may seem meet and just.

THE CHASE NATIONAL BANK OF THE
CITY OF NEW YORK, *Trustee*,

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